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7 **UNITED STATES DISTRICT COURT**  
8 **WESTERN DISTRICT OF WASHINGTON**  
9 **AT SEATTLE**

9 ERIC GILBERT,

10 Plaintiff,

11 v.

12 NORDSTROM, INC.; NAVY ACQUISITION  
13 CO., INC.; NORSE HOLDINGS, INC.; ERIK  
14 B. NORDSTROM; PETER E. NORDSTROM;  
15 JAMES L. DONALD; KIRSTEN A. GREEN;  
16 GLENDA G. MCNEAL; AMIE THUENER  
17 O'TOOLE; GUY B. PERSAUD; ERIC D.  
18 SPRUNK; BRADLEY D. TILDEN; MARK J.  
19 TRITTON; ATTICUS N. TYSEN; EL  
20 PUERTO DE LIVERPOOL S.A.B. DE C.V.,

21 Defendants.

Case No. 25-cv-00568

**EX PARTE MOTION TO EXPEDITE  
BRIEFING AND NOTATION DATE  
FOR EXPEDITED DISCOVERY  
AHEAD OF SETTING OF MERGER  
VOTE**

**NOTE ON MOTION CALENDAR:  
April 4, 2025**

## I. INTRODUCTION

Plaintiff Eric Gilbert (“Plaintiff”) respectfully submits this motion seeking expedited discovery, expedited briefing regarding same, and a briefing schedule on the anticipated preliminary injunction motion with a hearing to be held prior to an anticipated stockholder vote.

Plaintiff is a common stockholder of Nordstrom, Inc. (“Nordstrom” or the “Company”). (¶¶ 7, 29).<sup>1</sup> The Company entered into a Merger Agreement, whereby a buyer group consisting of members of the founding Nordstrom family (the “Nordstrom Family”) and El Puerto de Liverpool S.A.B. de C.V (“Liverpool,” collectively with the Nordstrom Family, the “Buyer Group”) will cash out public stockholders for \$24.25 per share. (¶¶ 1-2, 125). A vote on the Merger has yet to be scheduled, but Company counsel has advised that the vote will likely be held sometime in May.

Plaintiff’s books and records investigation<sup>2</sup> revealed that the Merger likely violates the Washington Business Corporation Act’s Anti-Takeover Statute,<sup>3</sup> because the Merger is not subject to the approval of stockholders holding two-thirds of the Company’s shares *excluding* the Buyer Group. This violation will irreparably harm public stockholders should the vote on the Merger proceed as currently structured. Plaintiff contemplates filing a motion for a preliminary injunction to enjoin the improper vote and the consummation of the Merger. This motion seeks expedited discovery to confirm whether to seek an early injunction.

Plaintiff seeks expedited briefing on this motion, which would otherwise be briefed and heard in 21 days per local rules. *See* LCR 7(d)(3), 37(a)(2). While all but two Defendants have been formally served (Erik Nordstrom and Liverpool) and counsel has been provided with Plaintiff’s discovery requests, Defendants currently have no obligation to appear until 21 days after such service. *See* Declaration of Reed R. Kathrein filed in support hereof ¶¶ 2-4; Exhibits A-D. But by then, the vote with the improper threshold may already be scheduled. Thus, absent expedited briefing and decision on this motion, Plaintiff’s ability to seek relief in advance of the

<sup>1</sup> All references to “¶ \_\_\_\_” herein shall be to the corresponding paragraphs of Plaintiff’s Complaint filed on March 31, 2025 (the “Complaint”).

<sup>2</sup> On January 9, 2025, Plaintiff served the Company a books and records demand pursuant to RCW 23B.16.020 to investigate potential violations of the Anti-Takeover Statute as well as the unfairness of the Merger.

<sup>3</sup> Washington Business Corporations Act, RCW 23B.19.040.

1 stockholder vote will be severely limited.

2 Plaintiff has attempted to meet and confer with known counsel. As part of those efforts,  
3 Plaintiff agreed to limit his requested document discovery to documents and communications  
4 concerning the September 3 Proposal (as defined below) and the Anti-Takeover Statute from June  
5 1, 2024 to September 11, 2024. *See* Kathrein Declaration ¶¶ 2, 5-7; Exhibit A. However, the  
6 parties have not reached agreement as of the time of this filing. *See* Kathrein Declaration.

7 Therefore, given notice to known counsel, Plaintiff seeks an order from this Court  
8 expediting any opposition to this motion to Tuesday, April 8, 2025, and respectfully requests a  
9 decision on the motion as soon as the following day, Wednesday, April 9, 2025.

10 Plaintiff's motion seeks very limited discovery critical to the anticipated preliminary  
11 injunction motion. Thus, the Court should grant such expedited discovery and order that  
12 Defendants respond to the interrogatories and produce documents within 10 days of the Court's  
13 ruling on this motion. As stated below, Plaintiff has good cause to warrant expedited discovery  
14 proceedings before a conference takes place under Fed. R. Civ. P. 26.

## 15 II. BACKGROUND

16 The Anti-Takeover Statute places strict limits on transactions between a Washington  
17 corporation and an "acquiring person" for a period of five years after the acquiring person acquires  
18 10% of the Company's outstanding stock. (¶¶ 58-60). For those five years, the corporation cannot  
19 engage in a "significant business transaction," such as the Merger, with an acquiring person, unless  
20 the transaction is approved (a) by the board of directors *prior to* the acquiring person's share  
21 acquisition time; or (b) by the affirmative vote of two-thirds of the Company's outstanding shares  
22 *excluding* the votes of the acquiring person. (*Id.*).

23 Under the statute, a person "beneficially own[s]" any shares owned by another person with  
24 whom the first person has "any agreement, arrangement, or understanding [an "AAU"]", whether  
25 or not in writing, for the purpose of acquiring, holding, voting, or disposing of the shares." (*Id.*).  
26 In other words, one stockholder's shares are aggregated with another stockholder should the two  
27 stockholders come to an AAU regarding a significant business transaction, including a take-private  
28 merger. (*Id.*). Importantly, the Anti-Takeover Statute "would encompass 'all arrangements,

whether formal or informal, written or unwritten,’ whether or not the arrangement constituted a legally binding contract.” *Siegmán for Siegmán v. Columbia Pictures Ent., Inc.*, 1993 WL 10969, at \*5 (Del. Ch. Jan. 15, 1993).<sup>4</sup> The Buyer Group collectively owns 43% of Nordstrom’s stock, thus triggering the pre-approval requirement of the Anti-Takeover Statute. (¶¶ 60, 107).

On September 3, 2024, the Company’s Board approved the formation of the Buyer Group, which permitted Liverpool to reach an AAU with the Nordstrom Family under the Anti-Takeover Statute *after* that date. However, the Preliminary Proxy indicates that Liverpool and the Nordstrom Family reached an AAU regarding a take-private transaction well *before* September 3. Proxy at 43-44; Complaint ¶¶ 61,104. Among other facts suggesting the existence of an AAU before September 3,<sup>5</sup> the Buyer Group submitted a detailed take-private proposal to the Special Committee *the same day* the Board approved the formation of the Buyer Group, suggesting they had already reached an AAU. Proxy at 44; Complaint ¶¶ 105-110.

The Merger as currently structured violates the Anti-Takeover Statute because it is not conditioned on the approval of holders of two-thirds of the Company’s outstanding shares, *excluding* the Buyer Group’s shares. (¶ 110).

### III. ARGUMENT

#### A. Legal Standard

Under Rule 26(d)(1), the Court can authorize expedited discovery before a Rule 26(f) conference upon a showing of “good cause.” *See Amazon.com, Inc. v. Aalitood*, 2024 WL 308109, at \*1 (W.D. Wash. Jan. 26, 2024). Good cause exists “where the need for expedited discovery, in consideration of the administration of justice, outweighs the prejudice to the responding party.” *Amazon.com, Inc. v. Pondit*, 2024 WL 5318718, at \*2 (W.D. Wash. Dec. 26, 2024) (internal citation omitted). Moreover, “diligence and the intent of the moving party are the focus of the inquiry into good cause.” *Id.* (citing *Johnson v. Mammoth Recreations, Inc.* 975 F.2d 604, 609 (9th Cir. 1992)).

<sup>4</sup> *Cf. Goldberg Fam. Inv. Corp. v. Quigg*, 184 Wash. App. 1019 (2014) (“Because the Delaware courts have significant experience with the law of business entities, the courts of this state often look to Delaware decisions as persuasive authority.”).

<sup>5</sup> *See, e.g.*, Compl. ¶¶ 61-104.

1 In determining a request for expedited discovery, the Court considers the following factors:  
 2 “(1) whether a preliminary injunction is pending; (2) the breadth of the discovery requests; (3) the  
 3 purpose for requesting the expedited discovery; (4) the burden on the defendants to comply with  
 4 the requests; and (5) how far in advance of the typical discovery process the request was made.”  
 5 *Veeder-Root Fuelquest, LLC v. Wisdom*, 2021 WL 1209257, at \*3 (W.D. Wash. Mar. 31, 2021).  
 6 (citations omitted). Here, these factors support Plaintiff’s request for expedited discovery.

7 **B. Good Cause Exists for Targeted Expedited Discovery**

8 Good cause exists to expedite discovery because a legally improper stockholder vote on  
 9 the Merger could be scheduled any time, with the closing occurring immediately thereafter. If  
 10 Plaintiff is forced to wait to obtain discovery in the normal course, the improper vote and closing  
 11 will have already taken place, resulting in irreparable damage to the Company’s stockholders.

12 Each of the applicable factors supports the finding of good cause.

13 *First*, Plaintiff seeks expedited discovery in anticipation of a motion to preliminarily enjoin  
 14 the consummation of the Merger unless or until the Merger agreement is amended to comply with  
 15 the Anti-Takeover Statute. Although a motion for a preliminary injunction is not currently pending,  
 16 courts in this Circuit have held that “expedited discovery may be justified to allow a plaintiff to  
 17 determine whether to seek an early injunction.” *Apple Inc. v. Samsung Elecs. Co.*, 2011 WL  
 18 1938154, at \*2 (N.D. Cal. May 18, 2011); *Interserve, Inc. v. Fusion Garage PTE, Ltd.*, 2010 WL  
 19 143665, at \*2 (N.D. Cal. Jan. 7, 2010) (finding good cause to permit expedited discovery to allow  
 20 a litigant “to determine whether to seek an early injunction.”); *Bona Fide Conglomerate, Inc. v.*  
 21 *SourceAmerica*, 2014 WL 12515242, at \*2 (S.D. Cal. Nov. 7, 2014) (finding this factor weighed  
 22 in favor of the party seeking expedited discovery, even though there was not a motion for  
 23 preliminary injunction pending, because the requesting party “indicates that it may seek an  
 24 injunction once it has an opportunity to review” the discovery”). That is precisely what Plaintiff  
 25 seeks to do here.

26 *Second*, Plaintiff seeks only targeted discovery and has significantly narrowed his request  
 27 in discussions with Nordstrom’s counsel. *See* Kathrein Declaration ¶¶ 2, 5-7; Exhibit A. Discovery  
 28 will be principally focused on confirming that members of the Nordstrom Family and Liverpool

reached an AAU *prior to* Board approval on September 3, 2024. *See, e.g., Hardie v. N.C.A.A.*, 2013 WL 1399333, at \*2 (S.D. Cal. Apr. 5, 2013) (considering whether discovery requests were “narrowly tailored to the issues in the motion for preliminary injunction,” and finding “the majority of the information sought is relevant to the pending motion for preliminary injunction and is likely to assist the Court in resolving the motion.”); *NobelBiz, Inc. v. Wesson*, 2014 WL 1588715, at \*2 (S.D. Cal. Apr. 18, 2014) (granting expedited discovery when the plaintiff “has proffered facts that provide a reasonable basis to believe that Defendant” engaged in behavior that is the subject of the suit). Moreover, the requested discovery is necessary, because Plaintiff has exhausted all other avenues after previously serving a books and records demand on the Company. Communications among the Buyer Group members are critical to confirm a full understanding of the Buyer Group’s relationship.

*Third*, as described above, Plaintiff seeks expedited discovery in aid of Plaintiff’s forthcoming application for a preliminary injunction. There can be no question that an injunction is the appropriate remedy for violations of the Anti-Takeover Statute. As numerous courts have observed, “[s]hareholder voting rights are sacrosanct,” *EMAK Worldwide, Inc. v. Kurz*, 50 A.3d 429, 433 (Del. 2012), and the “loss of voting power constitutes irreparable injury.” *Phillips v. Insituform of N. Am., Inc.*, 1987 WL 16285, at \*11 (Del. Ch. Aug. 27, 1987).

*Fourth*, the burden on the Defendants to comply is minimal considering the irreparable harm faced by the public stockholders if the \$6.25 billion Merger is approved in violation of Washington’s statutory requirements. Moreover, as noted above, Plaintiff only seeks targeted discovery and does not seek third-party discovery.

*Fifth*, Plaintiff has also moved with sufficient alacrity. Plaintiff filed his complaint on March 31, 2025, two weeks after Nordstrom completed its production of Board and Special Committee minutes on March 14, 2025. Plaintiff served counsel for the Company a courtesy copy of the Complaint on April 1, 2025, and the discovery requests on April 2, 2025. And, Nordstrom’s counsel has been aware of Plaintiff’s investigation into the Merger’s adherence to the Anti-Takeover Statute since sending his books and records demand on January 9, 2025. Moreover, on April 2, 2025, Plaintiff sent a redacted copy of the Complaint and discovery requests to known

counsel for Defendants Erik B. Nordstrom, Peter E. Nordstrom and Liverpool.

This Motion is being filed just four days after Plaintiff filed his complaint. Due to the immediacy of the shareholder vote on the pending Merger, Plaintiff has no choice but to seek expedited discovery. Under normal course discovery, Plaintiff will not be able to obtain the discovery he needs prior to the stockholder vote and its subsequent closing. *See, e.g., Hardie*, 2013 WL 1399333, at \*2 (“[B]ecause the MSNM Western Basketball Tournament is scheduled for this summer, the Court finds that under a normal discovery schedule, it is likely Plaintiff would not be able to obtain discovery prior to the tournament.”).

In sum, the factors weigh in favor of granting expedited discovery.

#### IV. CONCLUSION.

For the reasons stated above, Plaintiff respectfully requests that the Court grant Plaintiff’s request for expedited briefing on this motion and permit expedited discovery.

I certify that this memorandum contains 2,026 words, in compliance with the Local Civil Rules.

DATED: April 4, 2025

Respectfully submitted,

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